



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; and to recover the filing fee from the tenant for the cost of this application.

At the outset of the hearing the landlord advised that the tenant is no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on January 22, 2016. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover unpaid rent?

Background and Evidence

The landlord testified that this month to month tenancy started on July 10, 2011. Rent for this unit was \$700.00 per month and was due on the 1st of each month, although from the end of June, 2015 the landlord agreed to allow the tenant to pay rent every two weeks. The tenant paid a security deposit of \$350.00 at the start of the tenancy and this is still held in trust by the landlord. The tenant vacated the rental unit on December 21, 2015.

The landlord testified that the tenant failed to pay all the rent due in 2013. For eight months of the year the rent was \$700.00 and for four months of the year the rent was reduced to \$600.00 as the landlord gave the tenant a rent reduction of \$100.00 per month for four months of the summer as the tenant was to mow the lawn. The amount of rent due for the year was \$8,000.00 and the tenant only paid \$7,200.00. This left a balance due of \$800.00.

In 2014 the tenant received the same rent reduction for four months. The rent due for the year was \$8,000.00 and the tenant paid \$8,300.00. This gave the tenant a credit of \$300.00 which was applied to the unpaid rent for 2013. Therefore the rent owed for 2013 was reduced to \$500.00. The landlord only seeks to recover \$425.00 of this overdue rent.

In 2015 the tenant did not receive the rent reduction as the landlord informed the tenant that she would mow the lawns herself. Therefore the rent due for 2015 was \$8,400.00. The tenant paid \$7,000.00, leaving an unpaid balance of \$1,400.00.

The landlord seeks to recover the unpaid rent for 2013 and 2015 to a total amount of \$1,825.00. The landlord also seeks to recover the filing fee of \$100.00.

Analysis

I have carefully considered the undisputed evidence before me; I refer the parties to s. 26 of the *Act* which states:

26. A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Consequently, I am satisfied from the undisputed evidence before me that the tenant has rent arrears to a total amount of \$1,900.00; however, the landlord has reduced her claim to **\$1,825.00**. Therefore the landlord is entitled to recover this amount from the tenant.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$100.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

I refer the parties to 72 of the *Act* which states:

72 (1) *The director may order payment or repayment of a fee under section 59 (2) (c) [starting proceedings] or 79 (3) (b) [application for review of director's decision] by one party to a dispute resolution proceeding to another party or to the director.*

(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

In this regard as the landlord has been successful in this matter, the landlord is entitled to recover the **\$100.00** filing fee for this proceeding.

I further Order the landlord to keep the security deposit of **\$350.00** and this will be offset against the landlord's monetary award as follows:

Rent arrears	\$1,825.00
Filing fee	\$100.00
Less security deposit	(-\$350.00)
Total amount due to the landlord	\$1,575.00

Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$1,575.00**. This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 12, 2016

Residential Tenancy Branch

